

**SURREBUTTAL TESTIMONY OF**  
**GREGORY M. LANDER**  
**ON BEHALF OF**  
**SOUTH CAROLINA COASTAL CONSERVATION LEAGUE AND**  
**SOUTHERN ALLIANCE FOR CLEAN ENERGY**  
**DOCKET NOS. 2017-370-E; 2017-305-E; 2017-207-E**

1 **Introduction**

2 **Q Can you please state your name and employment?**

3 **A** My name is Gregory M. Lander. My business address is 83 Pine Street, Suite 101,  
4 West 3 Peabody, MA 01960, and my email address is glander@skippingstone.com.

5 **Q On whose behalf are you testifying?**

6 **A** The South Carolina Coastal Conservation League and the Southern Alliance for  
7 Clean Energy.

8 **Q What is the purpose of your testimony?**

9 **A** My testimony responds to the rebuttal testimony of Robert M. Blue, offered by  
10 Dominion Energy in this case.

11 **Q What did Mr. Blue say regarding your direct testimony?**

12 **A** Mr. Blue was asked the following:

13 CCL/SACE Witness Lander makes certain recommendations  
14 concerning natural gas pipeline infrastructure and transportation  
15 capacity needs in South Carolina. Are these matters appropriate for  
16 consideration in this proceeding?

17 **Q What was his response?**

18 **A** He stated as follows:

1                   No, they are not. The siting and construction of interstate natural  
2                   gas pipeline infrastructure is beyond the scope of this  
3                   Commission's jurisdiction. In addition, whether there is a need for  
4                   additional natural gas transportation capacity is not an issue in this  
5                   proceeding and has no relevance to the proposed business  
6                   combination. These matters are not properly before the  
7                   Commission in this case, and should be disregarded.

8       **Q       Do you have any response?**

9       **A**Yes. According to his rebuttal testimony, Mr. Blue is an Executive Vice President  
10       of Dominion Energy and President and Chief Executive Officer of the Power Delivery  
11       Group. Considering his title and what is presumably a commensurate salary, I'm amazed  
12       he does not understand this issue.

13       **Q       What do you mean?**

14       **A**My recommendations are not about pipeline siting or construction; they are about  
15       conditions this Commission can impose on the proposed merger to protect ratepayers  
16       from abusive utility practices. Clearly this Commission, as is true with all state  
17       commissions, does not have authority over "siting and construction of interstate natural  
18       gas pipeline infrastructure," and I agree that "whether there is a need for additional  
19       natural gas transportation capacity" is not a direct issue in this proceeding," but Mr. Blue  
20       is clearly wrong that such issues have "no relevance to the proposed business  
21       combination."

22       **Q       Why are they relevant?**

23       **A**Because one of the factors that the Federal Energy Regulatory Commission,  
24       ("FERC") looks at in determining approvals of interstate pipeline "siting and  
25       construction" is the existence of capacity contracts sufficient to support the financing and  
26       operation of the proposed pipelines; and to the extent these contracts are between the  
27       pipeline and state-regulated utilities with captive customers—like SCE&G and

1 Dominion—these natural gas pipeline capacity contracts cost customers millions,  
2 sometimes billions of dollars. These contracts often are multi-decade, multi-million dollar  
3 financial commitments. These utilities recover those millions of dollar in costs from their  
4 customers, with the Commission's blessing. Where, however, a regulated utility signs a  
5 multi-decade, multi-million dollar contract with its own affiliate, there exists great  
6 potential for ratepayer abuse, which should concern this Commission, especially  
7 considering the financial hardship SCE&G has imposed upon its customers already.

8 **Q What kind of abuse?**

9 **A** The kind of abuse where a utility charges its customers billions of dollars for a  
10 totally unnecessary project that provides no customer value but greatly increases  
11 shareholder returns of a parent company that is out of reach of this Commission. Given  
12 the way SCE&G is, even now, trying to saddle its customers with billions of dollars of  
13 cost for a totally useless mass of concrete and steel, it should not surprise anyone that  
14 utilities behave in this fashion where they can get away with it.

15 **Q So how do you prevent this abuse?**

16 **A** By imposing conditions on the merger. Interstate natural gas pipeline  
17 development is an extremely lucrative industry right now, and utility holding companies  
18 across the country are getting into the business because they can shift risk from their  
19 shareholders onto their captive utility customers.

20 **Q How so?**

21 **A** FERC-approved interstate gas pipelines earn a 14% or higher rate of return for  
22 their developers. It is hard to find that kind of rate of return in any business venture  
23 anywhere else, and it is even harder to find a guaranteed 14% ROE elsewhere in the

1 market. Dominion has already taken advantage of this FERC-guaranteed ROE by  
2 proposing to build the Atlantic Coast Pipeline (“ACP”). To get FERC permission,  
3 however, Dominion needed to prove that the pipeline was “necessary.” It isn’t, which is  
4 why 89% of the pipeline capacity has been sold to the regulated utilities that are affiliates  
5 of the owners. The competitive market could not and would not support the project, but  
6 FERC’s currently broken approval process does not look to underlying need. Instead,  
7 FERC looks only to whether the pipeline developer has sold capacity on its pipeline,  
8 regardless of the relationship between the developer-owner(s) and the buyer(s) who  
9 bought the capacity. This can happen when, in states that do not have a prior approval  
10 process for their utilities entering into expensive, long-term capacity contracts, the  
11 regulated utilities enter into contracts with their affiliates to support the investment by  
12 their parent organization, all at the cost to ratepayers for those contracts. As the process  
13 currently works, there is a regulatory gap. Contrast this with states that do require a  
14 finding of need, and a competitive solicitation process be undertaken prior to approving  
15 the utility entering into the contract. In this latter case, there is no regulatory gap—as it  
16 pertains to determination of “need”/“necessity.”

17 To exploit this regulatory failure, this regulatory gap, Dominion and its partners  
18 have committed the captive customers of their subsidiary utilities to paying off the  
19 pipeline, even though—as I explained in detail in my pre-filed direct testimony—  
20 Dominion’s utility arm does not need that contract.

21 **Q What is FERC doing about this regulatory failure?**

22 **A** Nothing at the moment, but I would note that two FERC Commissioners have  
23 openly questioned whether their process is providing adequate ratepayer protections. In

particular, with respect to the issues of assessing “need” and the absence of explicit state pre-approval, on this first part, “assessing need” Commissioner Glick, in his dissent on the PennEast certificate order states:

In today’s order, the Commission relies exclusively on the existence of precedent agreements with shippers to conclude that the PennEast Project is needed. Pursuant to these agreements, PennEast’s affiliates hold more than 75 percent of the pipeline’s subscribed capacity. While I agree that precedent and service agreements are one of several measures for assessing the market demand for a pipeline, contracts among affiliates may be less probative of that need because they are not necessarily the result of an arms-length negotiation. By itself, the existence of precedent agreements that are in significant part between the pipeline developer and its affiliates is insufficient to carry the developer’s burden to show that the pipeline is needed.

Under these circumstances, I believe that the Commission must consider additional evidence regarding the need for the pipeline. As the Commission explained in the Certificate Policy Statement, this additional evidence might include, among other things, projections of the demand for natural gas, analyses of the available pipeline capacity, and an assessment of the cost savings that the proposed pipeline would provide to consumers. The Commission, however, does not rely on any such evidence in finding that there is a need for the PennEast Project. Accordingly, I do not believe that the Commission’s order properly concludes that the PennEast Project is needed.” [footnotes omitted].<sup>1</sup>

And, with respect to the second part, the lack of an explicit state pre-approval, in a situation where a Missouri utility (Spire Missouri) entered into a precedent agreement with its affiliated interstate pipeline (Spire STL), and as stated in Commissioner Glick’s dissent:

[T]he Missouri Public Service Commission (Missouri PSC) points to ample record evidence that casts doubt on whether the precedent agreement actually reflects a need for the Spire Project . . .<sup>2</sup>

but as the dissent also states:

---

<sup>1</sup> Commissioner Glick Dissent PennEast January 19, 2018 Docket No. CP15-558-000.

<sup>2</sup> Commissioner Glick Dissent Spire STL August 3, 2018 Docket Nos. CP17-40-000, CP17-40-001.

1           The Missouri PSC explains that it has no authority to review and  
2           approve an LDC's gas supply decisions or gas transportation contracts  
3           with affiliates prior to construction . . .<sup>3</sup>

4       Commissioner LaFleur concurs as to this regulatory gap in her dissent:

5           [T]he Missouri PSC itself asserts an inability to conduct a prudence  
6           review prior to the Commission's certificate authorization . . .<sup>4</sup>

7       And Commissioner LaFleur goes on to state in a footote that she:

8           agree[s] with Commissioner Glick that given the [PSC's] lack of  
9           authority to review and approve a LDC's supply decisions or contracts  
10          with affiliates prior to construction, state review cannot be an effective  
11          backstop in this circumstance.<sup>5</sup>

12       **Q       So, what you're saying is that FERC does not review the prudence of affiliate**  
13       **contracts for interstate natural gas pipelines, and many state commissions lack**  
14       **authority to do so?**

15       **A       Yes.**

16       **Q       And how has Dominion exploited this regulatory gap in Virginia?**

17       **A       I discussed this in my pre-filed direct testimony, but my calculations show that the**  
18       contract Dominion has signed with its affiliate will increase Virginia customer costs by  
19       between \$2.5 and \$3 billion, with no quantifiable net-benefits to ratepayers.

20       **Q       If the merger closes, could Dominion repeat this process in South Carolina?**

21       **A       Without adequate merger conditions, yes. If Dominion decides to expand the ACP**  
22       into South Carolina, it will need to present FERC with evidence of "need." If Dominion's  
23       pipeline developing arm signs a large enough contract with SCE&G (which will be a  
24       Dominion subsidiary if the merger closes), that will be sufficient evidence of "need."  
25       Under current FERC practices, there will be absolutely no investigation of whether (or

<sup>3</sup> Commissioner Glick Dissent Spire STL August 3, 2018 Docket Nos. CP17-40-000, CP17-40-001.

<sup>4</sup> Commissioner LaFleur Spire Dissent August 3, 2018 Docket Nos. CP17-40-000, CP17-40-001.

<sup>5</sup> Commissioner LaFleur Spire Dissent August 3, 2018 Docket Nos. CP17-40-000, CP17-40-001.

1    how much) SCE&G actually needs additional gas fuel resources. There will be absolutely  
2    no investigation of whether new pipeline capacity is the cheapest fuel resource available,  
3    assuming there even is a need. And Dominion will have every expectation that it can  
4    charge its South Carolina customers for that contract, even if SCE&G never actually uses  
5    it for fuel. In the end, South Carolinians could pay hundreds of millions, if not billions, in  
6    future years with absolutely not benefit to them. It would seem that, after V.C. Summer,  
7    they have suffered enough.

8    **Q       So what should this Commission do?**

9    **A**This Commission has the opportunity, afforded by this proceeding, to close this  
10   regulatory gap. Where other state PSCs lack authority to review new capacity contracts  
11   before they are executed, this Commission can, and should, impose such a review as a  
12   condition of the merger. Specifically, this Commission should impose rigorous conditions  
13   upon the merger that protect South Carolinians from these abusive utility practices. My  
14   pre-filed direct testimony shows that SCE&G does not need any additional pipeline  
15   capacity to South Carolina. As such, there is no need for new capacity contracts,  
16   especially if those contracts are with utility affiliates. As a condition of this merger, the  
17   Commission can implement a process to protect against this very common, but very  
18   serious problem.

19   **Q       So, ultimately, your recommendations are about how this Commission can**  
20   **protect ratepayers from extremely expensive, wasteful, and unnecessary projects in**  
21   **the future. Why do you think Mr. Blue objects to your direct testimony on these**  
22   **ratepayer protection recommendations?**

1     **A**     Because Dominion does not want to risk the Commission putting in place a  
2     process to review and establish “need” in advance of contract signing, a process designed  
3     to protect ratepayers, nor does Dominion want this or any other Commission to inquire  
4     too deeply into how Dominion’s state-regulated affiliates procure natural gas pipeline  
5     capacity. I can think of at least five dockets in the past two years in Virginia where the  
6     state-regulated Dominion utility has objected to any discussion of its ACP contract with  
7     its parent company-owned interstate pipeline: (1) the 2017 fuel factor, (2) the 2017 IRP,  
8     (3) the 2018 fuel factor, (4) the 2018 IRP, and (5) a lawsuit brought by Sierra Club  
9     expressly challenging the contract as a violation of Virginia’s law prohibiting affiliate  
10    contracts without Commission approval. In fact, Dominion’s desire to keep its practices  
11    out of the public eye should—on their own—concern this Commission about what kind  
12    of company it is allowing to enter South Carolina. SCE&G has made serious errors in the  
13    past, but Dominion is no knight in shining armor. The Company can and will squeeze  
14    every available dollar out of South Carolina customers unless this Commission prevents  
15    them from doing so.

16   **Q**     **Have you read the Transco-Dominion settlement filed in this docket?**

17   **A**     Yes.

18   **Q**     **Does it address your concerns?**

19   **A**     Only partially. The Transco settlement does not create any opportunity for  
20    ratepayers to intervene to present their own evidence surrounding need and cost. As both  
21    SCE&G and Dominion’s behavior has made abundantly clear, neither this Commission  
22    nor the ratepayers can trust the utility to look after ratepayer interests. Prior to SCE&G  
23    participating in a solicitation, open season, or other process with respect to acquiring



1 capacity to bring additional gas to South Carolina, it should conduct the sort of need  
2 analysis I recommend in my pre-filed direct testimony, and then, to the extent need is  
3 identified, and determined, then the processes I outline and those articulated in the  
4 Settlement could proceed.

5 **Q Does this conclude your testimony?**

6 **A** Yes.